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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1963rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 18 October 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (Overseas Territories) (continued) (CCPR/C/UKOT/99/5)

1. At the invitation of the Chairperson, the members of the United Kingdom delegation resumed their places at the Committee table.

2. Mr. AMOR thanked the delegation for the remarkably detailed replies it had given. He noted from the report that in Bermuda juveniles were still not separated from adults in prisons, and would appreciate an explanation. Had the death penalty for piracy in fact been abolished, or was it considered as having fallen into disuse, which would not necessarily imply abolition? Concerning the Cayman Islands, he noted from paragraph 73 of the report that deportation could be ordered if a person was destitute or if it was considered that his deportation was "conducive to the public good". The notion of "public good" was a subjective one and could give rise to many different interpretations, some of which might not be compatible with the Covenant.

3. With regard to Gibraltar, he was somewhat uncomfortable with the statement in paragraph 114 that any changes in Gibraltar's constitutional status must be "realistic and compatible with international obligations, which include the Treaty of Utrecht", and would like to know how it should be interpreted. Paragraph 126 stated that in certain circumstances persons lawfully present in Gibraltar could have their residence permits cancelled, be declared prohibited immigrants or be liable to deportation. It seemed to him that that situation might give rise to arbitrary deportation, which would contravene the provisions of the Covenant.

4. Mr. GLELE AHANHANZO thanked the delegation for its reports, and welcomed in particular the steps taken to combat racial discrimination in the United Kingdom. He noted that in the discussion on anti-terrorist measures mention had been made of the latest Security Council resolution. He would like to know how that resolution related to the Covenant in terms of the hierarchy of legal norms.

5. Regarding the Cayman Islands, it had been stated that since there were no political parties, the tradition was to proceed by co-option, and that hence there was no violation of article 25. However, article 25 (c) provided that every citizen should have access, on general terms of equality, to public service in his country. Who then was co-opted by whom, and how was it decided to invest a person with the authority to carry out such co-option?

6. Mr. HENKIN asked for clarification as to the relevance of the Treaty of Utrecht to present-day Gibraltar, and whether that treaty might be repealed if it was found to be inconsistent with the Covenant.

7. Mr. STEEL (United Kingdom) said he had not fully understood all the questions asked at the previous meeting by Mr. Solari Yrigoyen. He would be grateful if the secretariat could provide a summary so that written replies could be given to those he could not answer immediately.

8. As to the complaint that the report referred to a number of documents which the Committee did not have before it, he pointed out that the documents referred to had in fact been supplied. Thus, paragraph 8 stated that a copy of the Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment was being transmitted to the secretariat. Copies of the Tumim report (para. 16), the report of the task force on women's issues (para. 10) and the report of the task force on child abuse (para. 22) had likewise been sent to the secretariat.

9. As he had stated that morning, the death penalty had been abolished in all overseas territories for all offences, except for piracy and treason in the Turks and Caicos Islands, where it had not yet been abolished for purely technical reasons. As to the status of illegitimate children in the Virgin Islands, he had explained earlier that the disadvantage that had formally attached to that status had now been removed.

10. Concerning Montserrat, Mr. Solari Yrigoyen had asked what had been the effect on human rights of the state of emergency declared following the volcanic eruptions of 1995, 1996 and 1997, and what was implied by the statement in paragraph 132 of the report that those rights continued to be observed "to the fullest extent possible". Paragraph 139 made it clear that even during the most acute crises there had never been a need to invoke the provision in the Constitution permitting derogation from certain fundamental rights in times of emergency (the provision corresponding to article 4 of the Covenant). The meaning of the phrase was simply that those rights had been fully observed, despite the circumstances. As to the situation of women in Pitcairn, paragraph 153 of the report showed that women were not merely treated equally but played a prominent part in public life, insofar as that term was appropriate in a community of 44 persons. There was no formal bar against them becoming elders of the church if they so wished. In Gibraltar, there was no discrimination on grounds of nationality, least of all against Spaniards.

11. St. Helena had race relations legislation modelled on that of the United Kingdom, relating chiefly to discrimination in the private sector in such areas as employment, membership of organizations and access to public places. Although it contained provisions whose violation could attract a criminal penalty, its main thrust was not towards enforcement of the criminal law but towards the removal and prevention of discrimination. St. Helena did not as yet have a provision in its Constitution banning discrimination in the public sector.

12. In reply to Mr. Scheinin's question on the situation of former inhabitants of the British Indian Ocean Territory, he said that territory, which was now known as the Chagos Islands, had not in fact been annexed by the United Kingdom but had been passed to it in 1814 or 1815, together with Mauritius, following the Napoleonic wars. After that time it had continued as a dependency of Mauritius. In 1965, it had been agreed that the islands should be set aside for use for defence purposes by the United States and United Kingdom, and to facilitate such use the territory had been withdrawn from Mauritius and made a separate colony. At that time there had

been a small civilian population of some 2,000 persons, employed on copra plantations belonging to companies in Mauritius and Seychelles. They were entirely dependent on those companies for food, accommodation, medical care and education. They were descended from an original population imported into the territory by Mauritian plantation owners, initially as slave labour and subsequently as contract labour.

13. By 1965 the copra industry had been in decline, and it was clear that it would be difficult for it to continue viably while the United States was operating its defence facility on Diego Garcia. The plantations had gradually been run down, and as a result the civilian population had left the islands, in some cases for Seychelles but in most cases for Mauritius, where provision had been made for their resettlement. They had acquired citizenship of those countries on their accession to independence, but continued to be British nationals, and after 1981 citizens of the British dependent territories.

14. After the departures that had taken place between 1969 and 1973, there was no longer a civilian community on the islands, and a law had been enacted making it unlawful to enter the territory without a permit. That law had recently been challenged in the High Court in London, which had ruled that the law was invalid in that it denied access to people belonging to the territory. The United Kingdom had not appealed against that ruling, but had amended the law to ensure that any island-dweller had the right to return to any part of the territory except Diego Garcia. However, the right to return was not the same as the right to resettlement, since currently there were no houses, roads, schools, hospitals, means of access or obvious means of subsistence. The Government had commissioned a feasibility study to advise on whether resettlement was practicable, and if so how it could be made viable. The first phase of that study had been completed. The Covenant did not for the moment apply to the territory, since the population had departed by 1973 and the United Kingdom had not ratified the Covenant until 1976. If and when the population returned, that question would have to be addressed.

15. In reply to the question whether any new legislation concerning corporal punishment in schools and in the family introduced by the British Government would also be applicable to the overseas territories, he said that it would apply only to the United Kingdom. The issue of non-judicial corporal punishment was a matter of considerable sensitivity. Some territories had abolished corporal punishment in schools. Others, particularly in the Caribbean, had not, but the administration of such punishment was subject to restrictions and safeguards. The independent States of the Caribbean had adopted a different attitude to corporal punishment in schools from the United Kingdom. The British Government would therefore have to consider what form of persuasion it would be right and feasible to apply to its overseas territories in that part of the world. There would be an angry reaction from some territories if it moved to impose United Kingdom standards. Moreover, it was not universally agreed that there was a human rights requirement to abolish corporal punishment within the family.

16. With regard to the appropriateness of long-term imprisonment for inhabitants of some of the smaller territories when the sentence would have to be served in a location where the prisoner was isolated from his or her family, he agreed that prisoners should be imprisoned in the community to which they belonged. The only territory in which that principle was not being

observed was Montserrat because of the special circumstances prevailing there. It was to be hoped, however, that Montserrat would also have the facilities to accommodate its own prisoners in the near future.

17. He assured the Committee that courts in the overseas territories regularly considered the appropriateness of imposing alternative penalties to custodial sentences, save in the case of serious offences. However, limited resources were also a constraining factor when small islands sought to impose alternative forms of punishment.

18. In reply to the question whether a territory's decision against independence was considered to be final, he said that the British Government would not stand in the way of independence, and would indeed be prepared to offer assistance, if the territory changed its mind at a later stage.

19. The European Court of Human Rights had delivered its judgement in the Matthews case on 18 February 1999. One month later, the British Government had tabled an amendment to the 1976 European Community Act on Direct Elections in order to extend the franchise in European Union elections to Gibraltar. However, the amendment required the agreement, and subsequent ratification, of all member States. The Government would continue to exert pressure to that end.

20. He agreed that the new "St. Helenian status" reflected to some extent a wish on the part of the inhabitants to "keep outsiders out". It was a form of local citizenship, a way of defining who belonged to the territory and should therefore have automatic right of entry and other privileges. All the overseas territories had legislation establishing some form of local status, which largely determined the application of immigration controls and the issue of residence and work permits. When the British Government had offered to confer automatic British citizenship on the inhabitants of the overseas territories, some had been nervous at the prospect of reciprocity, fearing that they might lose the right to deny entry to British citizens or citizens of other overseas territories. They had been assured that no such condition was attached to the offer.

21. The death penalty for piracy had been formally revoked, except in the case of the Turks and Caicos Islands, where lawyers were working on the relevant legislation.

22. With regard to deportation proceedings in the Cayman Islands referred to in paragraph 73 of the report, he could not answer the question fully without access to the Immigration Law but the legislation resembled, in substance, that applied in the United Kingdom, especially the phrase "a person in respect of whom the Governor considers it conducive to the public good to make a deportation order". He was unable to define the scope of that provision, but it clearly covered cases of national security: persons whose activities would be likely to stir up civil disorder or racial strife or who engaged in criminal activities. While it was a broad concept, theoretically open to abuse, he submitted that it was not abused in practice and, if it was, remedies would be available.

23. With regard to self-determination for Gibraltar, he referred to the formula he had read out when addressing question 15 of the list of issues. The Government was open to any proposal to

amend the constitutional arrangements regarding the status of Gibraltar, provided that the amendment resulted in a constitution compatible with the United Kingdom's international obligations in respect of Gibraltar, and also the Treaty of Utrecht, which basically stipulated that, in the event of the United Kingdom renouncing sovereignty over Gibraltar, Spain should have the right of first refusal. Independence therefore required the concurrence of the Spanish Government. Any new constitutional arrangement should also be consistent with good governance and financial probity, especially since Gibraltar was a thriving offshore financial centre. And lastly, the arrangement should be in line with the constitution of other territories.

24. With regard to the Immigration Control Ordinance mentioned in paragraph 126 of the report, he was unable to list the grounds on which a person's residence permit for Gibraltar might be cancelled and the person deported, but they were the same as those invoked by any other country in the circumstances. He reminded the Committee that the United Kingdom had entered a reservation to the Covenant in respect of immigration control, reserving the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as it deemed necessary from time to time, also in regard to its overseas territories.

25. With regard to the relationship between Security Council resolution 1373 (2001) and the Covenant, he was unable to say whether the action against terrorism called for in the resolution would involve a derogation from Covenant rights, but if it did the provision of Article 103 of the Charter of the United Nations to the effect that obligations under the Charter prevailed over those under any other international agreement would apply.

26. There was no system of co-option in the Cayman Islands. Members of the Legislative Assembly were elected in the normal democratic way. There were at present no political parties as such but there was no obstacle to the formation of parties if that was what the inhabitants wished to do.

27. Mr. LALLAH said that the Committee would be pleased to hear from the British Government of any analysis it undertook of the possible conflict between Covenant rights and mandatory Security Council resolutions.

28. Mr. STEEL (United Kingdom) said he thought it was not for the Government to advise the Committee in that regard.

29. The CHAIRPERSON said that the Committee appreciated the Government's decision to update its fifth periodic report in the light of developments since its submission in October 1999. Unfortunately, however, the updated version had not been submitted sufficiently in advance for translation into French and Spanish, which placed Committee members who did not understand English at a disadvantage. Nevertheless, the Committee was impressed by the thoroughness of the report submitted and the highly efficient and professional manner in which the delegation had answered its written and oral questions. It had also been pleased with the delegation's systematic review of government action to address the concerns raised by the Committee during its review of the State party's fourth periodic report.

30. While the Committee welcomed the adoption of the Human Rights Act 2000, which gave effect to the provisions of the European Convention on Human Rights, it regretted that the Act failed to cover a number of Covenant rights that had no counterpart in the Convention. Those rights did not form part of domestic law and were therefore not enforceable by the courts. Moreover, the Act did not take precedence over domestic law, so that legislation could not be invalidated on the ground that it conflicted with the Act. However, he gathered that the courts could declare that legislation was inconsistent with the Act or even the Covenant, and he took it that in such cases Parliament would take action to rectify the situation.

31. The Committee welcomed the establishment of the office of Police Ombudsman in Northern Ireland. The Police Complaints Authority, which dealt with complaints in the remainder of the United Kingdom, was reportedly independent but had no investigative machinery of its own. It was to be hoped that moves to establish an authority with such machinery would be expedited.

32. It was a matter of satisfaction that the scope of the Race Relations Act had been extended to include many other bodies and certain educational establishments, and that guidelines had been issued to public authorities with a view to stamping out racial attitudes and improving race relations. But racial prejudice clearly persisted, as evidenced by the large number of racist incidents recorded by the police and the fact that non-white persons were, on average, five times more likely to be stopped and searched by police officers. The Government should redouble its efforts to remedy the situation by introducing human rights courses at all levels of education in order to change basic attitudes.

33. The Committee welcomed the establishment of a human rights commission in Northern Ireland, which could serve as a less expensive and more expeditious means of redress than the courts. It strongly recommended the establishment of a similar commission for the remainder of the United Kingdom. He found it ironic, to say the least, that the United Kingdom, whose history and traditions had inspired common-law countries such as India to reflect the values of equality and non-discrimination in their constitutions, had not itself incorporated into its legislation a free-standing right to protection against discrimination, as embodied in article 26 of the Covenant.

34. The concerns raised by his colleagues about matters such as the number of asylum-seekers in detention, the interception of documents under the Investigatory Powers Act, the use of truth as a defence in contempt of court cases, and the representation of ethnic minorities in the public services, would be dealt with at greater length in the Committee's concluding observations.

35. He welcomed the frank dialogue which had taken place concerning the human rights situation in the United Kingdom overseas territories. He was pleased to note that all those territories had their own administration, law-making machinery and judiciary, which functioned largely without interference with London, with the notable exception of the overriding legislation imposed in respect of the abolition of capital punishment and judicially inflicted corporal punishment. It was regrettable that the Covenant was still not a part of domestic law in the overseas territories and that, with the exception of Bermuda, they had no human rights

legislation. He strongly recommended that the United Kingdom Government should incorporate the Covenant into the domestic law of the overseas territories and extend the Human Rights Act to them.

36. In conclusion, he expressed his admiration for the excellent report submitted by the United Kingdom Government, and congratulated the delegation on the extremely frank and stimulating dialogue in which it had engaged.

37. Ms. MacNAUGHTON (United Kingdom) thanked the Committee for the careful and constructive attention it had devoted to her country's report, which had opened up fresh perspectives for her delegation. She trusted that the delegation had fully demonstrated her Government's conviction that human rights was a process, rather than a single act of compliance. Her delegation had already approached the NGOs represented at the current meeting with a view to establishing a continuing dialogue once the Committee had produced its concluding observations. She expected that process to yield tangible results in time for her country's next appearance before the Committee. Finally, she assured the Committee of her delegation's conviction that every individual should do everything possible to build the human rights culture envisaged under the Covenant.

The public part of the meeting rose at 4.35 p.m.